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January 28, 1999

VIA FEDERAL EXPRESS
Magalie Salas
FCC Secretary
445 12th Street S.W., Room TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Presentation Regarding Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Salas:

Enclosed please find two (2) copies of an *ex parte* presentation of Williams Communications, Inc. in Common Carrier Docket No. 98-147. Please date-stamp and return the extra copy of this letter in the enclosed postage-paid return envelope to the undersigned. You may contact the undersigned with any questions regarding this submission.

Sincerely yours,

Emily S. Barbour

Emily S. Barbour
Attorney for Williams Communications, Inc.

ESB/gaw
enclosure

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January 28, 1999

VIA FEDERAL EXPRESS
Chairman William E. Kennard
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

Re: *Ex Parte* Presentation Regarding Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Chairman Kennard:

Enclosed is a copy of a January 25, 1999 letter to Commissioner Bob Rowe, Chairman of the Communications Committee of the National Association of Regulatory Utility Commissioners, from Mickey Moon, Director of Regulatory Affairs of Williams Communications, Inc. ("Williams"), regarding the above-referenced rulemaking in Docket No. 98-147.

Under the restriction set forth in Section 1.1203(a) of the Commission's rules, the enclosed letter could not be submitted as an *ex parte* presentation between January 21, 1999, when the Commission released a Public Notice scheduling this rulemaking as an agenda item for the January 28, 1999, open meeting (Item No. 2, Common Carrier Bureau), and January 27, 1999, when the Commission released its Public Notice deleting this item from the open meeting agenda.

Pursuant to Sections 1.1203(b)(2) and 1.1206 of the Commission's rules, since the advanced services rulemaking proposal has been deleted from the open meeting agenda, Williams respectfully submits the enclosed letter for consideration by the

Commission as an *ex parte* presentation. Two (2) copies of this *ex parte* presentation have been submitted to the Commission Secretary.

Should any questions arise concerning this matter, please contact Mickey Moon, Director of Regulatory Affairs, Williams Communications, Inc., at the address and telephone number stated in the letter to Commissioner Rowe, or the undersigned.

Sincerely yours,

Emily S. Barbour

Emily S. Barbour
Attorney for Williams Communications, Inc.

ESB/gaw
enclosure

c: Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani
Lawrence E. Strickling, Chief, Common Carrier Bureau

675642.1

COMMUNICATIONS
P.O. Box 22067
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January 25, 1999

VIA FACSIMILE/FEDERAL EXPRESS

The Honorable Bob Rowe
Commissioner, Montana Public Service Commission
First Vice President
Chair, Communications Committee
National Association of Regulatory Utility Commissioners
1100 Pennsylvania Avenue, N.W.
Room 603
P.O. Box 684
Washington, D.C. 20044

Re: FCC Separate Affiliate Proposal for Local Exchange Telephone Service

Dear Mr. Rowe:

Williams Communications, Inc. ("Williams") writes to express its approval of the FCC's pending proposal to allow incumbent local exchange carriers ("ILECs") to offer advanced telecommunications services through separate affiliates (the "FCC Proposal"). This proposal, when adopted, will stimulate deployment of advanced telecommunications services and foster a wide range of choices for consumers. The purpose of this letter is to address the concerns raised by opponents of the FCC Proposal in communications to NARUC and the FCC. The correspondences include a letter dated January 8, 1999 to NARUC from representatives of AT&T, Quest, CompTel, and MCI-Worldcom regarding implications of the FCC Proposal (the "Letter to NARUC"), an *ex parte* letter dated

January 20, 1999 to FCC Chairman Kennard from the Association for Local Telecommunications Services (the "ALTS Letter") and an *ex parte* letter dated December 10, 1998 to FCC Chairman Kennard from the U.S. Internet Service Providers *et al* (the "ISP Letter").

The authors of the Letter to NARUC mistakenly believe that the FCC Proposal will undermine the public switched telephone network and state regulation thereof. Their letter criticizes the FCC Proposal as providing no incentive for ILECs to upgrade their regulated networks and services. For the reasons advanced below, Williams anticipates a different, more favorable, pro-competitive outcome. Implementation of the FCC Proposal will foster local competition consistent with the intent of Congress as expressed in the 1996 Act and as carried out through the FCC's implementing policies.

ILECs Will Continue to Maintain and, as Market Demand Dictates, to Upgrade Their Existing Public Switched Telephone Networks and Their Service Offerings.

The Letter to NARUC posits that the switched public telephone network will deteriorate into obsolescence because if ILECs are allowed to offer advanced services through separate affiliates, they will not upgrade their ILEC networks. This assertion is counter-intuitive and illogical. On the one hand, market forces and investment in technology, not

adherence to Section 251(c), are relegating the existing switched public telephone network to obsolescence. This is a benefit, not a detriment, to consumers. Not expanding the restrictions of Section 251(c) to encompass advanced services affiliates will allow market forces to stimulate greater investment in advanced services technologies and allow the customer benefits to materialize more rapidly and more widely.

On the other hand, there is simply no reason to assume that ILECs would not continue to upgrade and maintain their local loops to provide services to customers of the public switched network where sufficient customer demand for those services exists. Without the upgrade of the existing ILEC network, particularly the local loops, many customers would be denied access to the advanced services that are available on the broadband, packet-switched backbone networks being deployed by Williams and other carriers that are building broadband networks at the national level. The ILEC has a clear incentive to provide this access through its local loops where customers wish to have it.

Moreover, the ILEC is not the only means through which customers could obtain basic local telephone services. Thus, even if the illogical scenario posited in the Letter to NARUC were to come true and the ILEC existing network were to crumble away, customers could obtain local telecommunications service from competitive local

exchange carriers ("CLECs"), who would be expected to step in with a more competitive and marketable network.

The FCC Proposal Will Facilitate Rapid Deployment of Advanced Services by Permitting the Widest Possible Range of ILEC Investment and Service Offerings.

The authors erroneously contend in the Letter to NARUC that the FCC Proposal should prohibit or restrict ILEC investment and services through separate affiliates of ILECs. This proposition runs counter to the free market, pro-competitive underpinnings of the 1996 Act. The FCC Proposal will facilitate consumer choice consistent with the 1996 Act's deregulatory, pro-competitive policy.

The restraints on ILECs advocated in the Letter to NARUC would create an artificial regulatory restriction on the available supply of advanced services. The FCC would, in effect, decide among competing providers who would be permitted to invest in network facilities and parcel out what services they could offer. In an era of telecommunications deregulation, this approach would be a step backwards. Indeed, it would be inconsistent with the role that the FCC defines for itself in its notice of proposed rulemaking: "not to pick winners or losers, or select the 'best' technology . . . but rather to ensure that the

marketplace is conducive to investment, innovation, and meeting the needs of consumers."

While the FCC Proposal appropriately permits ILECs significant latitude in investment and services through separate affiliates, the regulatory regime does not permit the ILEC to "cannibalize" the "Old LEC" as the Letter to NARUC suggests. Under existing FCC precedent, if an ILEC transfers to an affiliate ownership of its network elements that must be unbundled under section 251(c), the affiliate is deemed to be an assign of the ILEC. The FCC Proposal also provides that an ILEC's wholesale transfer of facilities used to provide advanced services, such as DSLAMs and packet switches, would make the transferee affiliate an "assign" subject to section 251(c) interconnection rules. If an advanced services affiliate were to cannibalize ILEC network elements in order to operate, the affiliate would risk being deemed an ILEC subject to interconnection with competitors at unbundled network element rates. Thus, a strong economic disincentive exists for "cannibalization."

Furthermore, an ILEC that simply replaced its old network with that of a separate affiliate would run the risk of finding that the affiliate was a "successor" to the ILEC or a replacement ILEC under section 251(h)(1)(B)(ii) or 251(h)(2) of the 1996 Act. As a

successor or replacement ILEC, the affiliate would be subject to all the obligations of section 251(c).

Competitors Will Continue to Have Access to Unbundled Network Elements Under Section 251(c). The Letter to NARUC protests that its authors will be denied access to network elements necessary to market their services because ILEC separate affiliate facilities will be exempt from Section 251(c). This view overlooks two important points. First, ILEC investment in facilities used to provide advanced services likely will remain in the public switched network. For example, for the reasons described previously, it is logical to expect that ILECs will continue to upgrade and maintain their local loops to be compatible with the advanced services available on the backbone networks of other carriers such as Williams. These ILEC facilities would remain subject to section 251(c) obligations. For an ILEC to transfer these facilities to its affiliate could mean reclassification of the affiliate as an ILEC. Thus, ILECs have the incentive to build and retain state of the art investments in facilities for advanced services.

Second, the section 251(c) interconnection mandate remains unchanged as to the ILEC's existing network. To the extent that ILEC facilities used for advanced services fall within the definition of network elements in section 3 of the 1996 Act, the ILEC still must

provide interconnection with those facilities on nondiscriminatory terms. Thus, competing carriers will have access to the same facilities for advanced services in the public switched network as the ILEC, on equal footing.

The opponents of the FCC's proposal express concern that competitive DSL deployment will be hindered by the inability of potential competitors to obtain the necessary access to ILEC facilities at economic rates. The FCC Proposal, allowing ILEC separate affiliates to deploy facilities for advanced services, will alleviate - not exacerbate - this concern. Implementation of the FCC Proposal will reduce unbundled network element prices. ILECs will have the financial incentive to lower prices so that ILEC separate affiliates can enjoy the benefits of cost savings on nondiscriminatory terms with other competitive companies that purchase network elements.

Exempting ILEC Facilities in Separate Affiliates from Interconnection Obligations Will Spur Rapid Development of Local Competition and Consumer Choice. The Letter to NARUC suggests that the FCC Proposal will delay competition and consumer choice by exempting the ILEC facilities of separate affiliates from section 251(c). As explained above, when the FCC issues the order in this rulemaking, ILECs will have a compelling economic incentive to invest in facilities required to deploy innovative new

telecommunications technologies. Moreover, on a level playing field with competitors, an ILEC's advanced services affiliate will be able to maximize its return on its investment without the artificial restraints of providing interconnection on an unbundled basis.

The foregoing financial incentive will result in rapid deployment of advanced services capabilities on the public switched network. The ISP Letter aptly points out that "the free market, and not government . . . creates incentives for companies to invest in and deploy new technologies and services." Once the FCC Proposal is effective, allowing free market incentives to replace artificially imposed regulatory incentives, ILECs will be able to fuel the robust competition in the free market that the ISPs advocate.

The FCC Proposal to Allow Advanced Services Affiliates is Consistent with Section 251(c). The Letter to NARUC and the ALTS Letter inaccurately characterize the FCC Proposal to allow ILECs to place advanced services facilities in a separate affiliate as sidestepping section 251(c). The idea that an ILEC is evading section 251(c)'s requirements if it provides advanced services through a separate affiliate has no statutory basis. Section 251(c) unbundling and resale requirements apply only to ILECs.

Section 251(c) does not and should not be misconstrued to apply to advanced services affiliates that are neither assigns nor successors to ILECs. These affiliates will deploy equipment and facilities that they purchase *new* for the deployment of innovative *new* technologies to meet *new* consumer demand. When these facilities are newly purchased by the separate affiliate, rather than assigned away from the ILEC, nothing in Section 251(c) requires imposition of interconnection restrictions. The protestors are promoting regulatory restraints which are contrary to the letter and spirit of the 1996 Act's pro-competitive goals.

The unbundling and resale obligations imposed upon traditional ILEC services significantly undermine the incentive of ILECs to invest enormous amounts to deploy advanced services broadly. These obligations discourage such investment by artificially forcing ILECs to invest in advanced service facilities, and by permitting competitors to piggyback on ILEC investment to enter the market. While some parties may seek to perpetuate this scenario, the result is to discourage the timely development of advanced services capabilities by incumbents and competitors, and to deprive consumers of the benefits of such deployment.

State Commissions Will Retain Their Current Regulatory Authority Over the Public Switched Network. The Letter to NARUC claims that the FCC Proposal muddles state commissions' powers to regulate and undermines their role in safeguarding the public switched network. Nothing in the FCC Proposal diminishes the role of state commissions in consumer protection, rate regulation or quality of service regulation. These powers arise under state statutes and regulations, not under Section 251(c) of the 1996 Act. Exemption of advanced services affiliates from Section 251 will not affect state commission powers to regulate ILEC public switched network operations.

Technological Developments and Consumer Demand - Not the FCC Proposal - Will Determine the Level of Continued Investment in the Public Switched Network. The authors of the Letter to NARUC contend that the FCC Proposal would "condemn the public switched network to technological obsolescence" because ILECs would migrate their customers to their affiliates. They forget that ILEC operators are replacing circuit-switched networks with packet-switched networks today as a natural evolution in technology, irrespective of the FCC Proposal. The existing regulatory regime is artificially delaying this natural technological progression. Allowing ILECs to deploy advanced services through separate affiliates exempt from section 251(c) interconnection can only serve to speed up technological advancement. If, as suggested, some customers

migrate to the affiliate, it is because free market competition has enabled consumers to freely choose between the affiliate and other competitors competing on a level competitive playing field.

The Letter to NARUC suggests that interested parties convene a forum to discuss issues, as if the notice and comment periods in the FCC rulemaking on advanced services were inadequate for thorough examination of the subject. Convening a forum at this juncture would only delay decision on the FCC Proposal. Williams respectfully submits that the time for discussion has passed and the time for consumer choice and competition has arrived.

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